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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,795	09/12/2003	Kenneth Peter Bowman	16-19-101	8351

7590 07/18/2005

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EXAMINER

KATCHEVES, BASIL S

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 07/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,795

Applicant(s)

BOWMAN, KENNETH PETER

Examiner

Basil Katcheves

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 1, 2 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,697,932 to Goodwin in view of U.S. Patent No. 5,802,785 to Crook.

Regarding claim 1, Goodwin discloses a method of finishing an opening by inserting a shim plate (16) with a top sill portion plate and frontal flange located between a framing member (12) and the periphery of a framing insert (32). Goodwin also discloses positioning a finishing material (38) on top of the sill and fastening it to the framing member (12) by use of a fastener (40) extending through the shim plate. However, Goodwin does not disclose a foaming material injected between the frame member and shim plate. Crook discloses a foaming insulation for window frames (72) between the sill (20) and framing member (66). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goodwin by adding a foaming insulation below the shim plate, as disclosed by Crook, in order to better insulate the window frame.

Regarding claim 2, Goodwin discloses the sill portion as inserted into a slot of the framed member (16 & 32). In addition, the lip is inherently capable of preventing deflection, as the shim plate is in contact with the slot.

Regarding claim 3, Goodwin in view of Crook discloses the use of plastic for the shim plate (Crook, column 6, lines 34-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goodwin by using

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plastic for the shim plate, as disclosed by Crook, in order to save weight and resist corrosion when a lighter insert is used.

Regarding claim 5, Goodwin in view of Crook discloses a foaming insulation, but does not specifically claim the foam as being low-expansion. However, it would be obvious to one in the art to use a low-expansion foam in a situation that required a small area to be filled, rather than a high-expansion foam which would be needed to fill a large space. In this situation, there is a small area below the shim plate of Goodwin and of Crook and therefore it would have been obvious to use a low-expansion foam.

Regarding claim 6, Goodwin discloses the sill portion as being perpendicular to the insert and the end portion of the sill as being in contact with the periphery of the framed member (fig. 3: 36).

Regarding claims 7, Goodwin discloses a method of finishing an opening by inserting a shim plate (16) with a top sill portion plate and frontal flange located between a framing member (12) and the periphery of a framing insert (32). Goodwin also discloses positioning a finishing material (38) on top of the sill and fastening it to the framing member (12) by use of a fastener (40) extending through the shim plate. However, Goodwin does not disclose a foaming material injected between the frame member and shim plate. Crook discloses a foaming insulation for window frames (72) between the sill (20) and framing member (66). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goodwin by adding a foaming insulation below the shim plate, as disclosed by Crook, in order to better insulate the window frame. Goodwin discloses the use of one fastener extending

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through the shim plate to the framing member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add an additional fastener, since it has been held that a mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. V. Bemis Co.*, 193 USPQ 8.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,697,932 to Goodwin in view of U.S. Patent No. 5,802,785 to Crook further in view of U.S Patent No. 2,800,956 to Xanten.

Regarding claim 3, Goodwin in view of Crook do not disclose the use of a steel L shaped sash. Xanten discloses the use of a steel L shaped sash (line 31, fig. 1: 15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goodwin in view of Crook, by using steel for the sash, as steel is known in the art to be stronger than aluminum and may be used in situations using heavier inserts.

Response to Arguments

Applicant's arguments filed 5/2/05 have been fully considered but they are not persuasive. Applicant argues that the prior art (Goodwin) does not disclose a "shim". However, the applicant should note that the component of Goodwin referred to as a shim in the action, meets the basic claim structure of the "shim" in the application, and therefore may be construed as such. Applicant argues the intent of the Goodwin art.

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However, the structural limitations of the application are met by the disclosure of the Goodwin art and therefore, Goodwin meets the claim limitations as claimed. Applicant argues that Goodwin teaches away from using nails or screws. However, figure 5 of Goodwin clearly shows use of a screw. Also, applicant is not claiming a screw or a nail, but a more generic "fastener". Applicant argues the combination of the prior art (Goodwin in view of Crook). However, applicant should note that the prior art are both directed to the art of windows and disclose the same basic structure. Cook discloses the use of foam insulation to the window and provides the motivation for doing so. Applicant argues the slot for which the sill is inserted. Applicant should take note of the two side member located at 32, above the numeral 16. This is a cross sectional view (fig. 2) and as such may not appear clearly as a slot. However, the area is indeed a slot, as it has two walls and a web between. Applicant argues the names of the components used through the previous office action. The applicant should note that if the components are structurally similar by meeting the claim structure of the applicant, then these components may be construed as having the equivalent function and use of the applicants components.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK


Basil Katcheves

7/13/05

Primary Examiner, AU 3635